In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 926

CARL ALTON WRIGHT AND WILLIAM JOHNSON YAUGHN, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is reported at 403 F. 2d 43.

JURISDICTION

The judgment of the court of appeals was entered on October 30, 1968. A petition for rehearing was denied on November 29, 1968. Mr. Justice Fortas extended the time for filing a petition for a writ of certiorari to January 8, 1969, and the petition was

filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether probable cause existed for the arrest of petitioner Yaughn without a warrant.

STATEMENT

After a jury trial in the United States District Court for the Middle District of Georgia, petitioners were convicted of theft from a military reservation of ammunition valued at more than $100, in violation of 18 U.S.C. 641. Wright was sentenced to imprisonment for three years and Yaughn to imprisonment for two years (R. 1, 301-302). The court of appeals affirmed.

The sole issue is the validity of Yaughn's arrest and a search incident thereto.

The evidence at a hearing on a motion to suppress and at trial showed that a number of thefts at Robins Air Force Base, Georgia, had occasioned an F.B.I. investigation and surveillance of Building 619, in which ammunition was stored. On the morning of Sunday, February 5, 1967, at approximately 3:15 A.M., agents stationed at different points observed an Air Force police truck stop in front of the building (R. 24-26, 70-71, 80, 95, 131). Two men got out and went to the front door of the building. One was dressed in the uniform of a civilian policeman for the Air Force. The other, of medium height and hatless, was described by some of the agents as dressed in dark clothing (R. 27, 96), and by others

as wearing a dark red or rust colored sweater and lighter colored trousers (R. 72, 74, 76-77, 134, 137). After a short period during which the men were doing something at the door the nature of which the agents were unable to discern, the door was opened. The man in civilian clothes entered, and another door was opened. The truck was driven up to the second door and both men were seen carrying boxes from the building and loading them on the truck. After about ten minutes, the truck drove off quickly, eluding an attempt by agents in a government vehicle to pursue it. About five minutes later, at a distance of some 400 yards from Building 619, an Air Force truck with Wright seated in it was found in a storage area. Cartons of ammunition were in the truck and next to it on the ground.[1] Wright was placed under arrest (R. 28, 37, 51, 54, 96-97, 126, 150-151).

At about 4:00 A.M., two military police from the Air Force were scouting the area looking for the second man. At a point on the base about three blocks from the site of the theft they saw petitioner Yaughn, hatless, walking at the side of the street. He was asked to produce his ID card and to state where he worked. Yaughn said that he worked at a building on the opposite side of the base and that he was going

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[1] On the previous Friday an inventory of the ammunition in Building 619 had been made and F.B.I. agents had placed identifying marks on some of the boxes. All of the boxes at the scene of Wright's arrest bore these markings and their number corresponded exactly with the shortage found upon re-inventorying the stock after the theft. A total of approximately 37,000 rounds of ammunition, valued at $1,200 to $1,300, was involved (R. 38, 78, 92, 100-103, 207-212, 216).

for some x-rays. He was asked to stand by while a radio call to security headquarters was placed (R. 9-20). A few minutes later, two F.B.I. agents arrived. Yaughn matched the description which the agents had received of an individual of medium height wearing a rust colored sweater or jacket which zipped up the front, and light colored trousers (R. 61-65). Yaughn was asked to accompany the agents to security headquarters and was searched for weapons (R. 197). At headquarters he was advised of his rights and signed a waiver. In response to questioning, Yaughn said that he was on the way to the propeller shop where he was going to examine some X-ray equipment in conjunction with his work. He said that he walked the distance of approximately five miles from the place where he worked because he had suffered from an ulcer and long walks aided his health (R. 197-198). Examination of Yaughn's billfold revealed a number of lock picking devices (R. 44, 49, 181-182).[2] He was formally placed under arrest about 7:30 A.M., following a call to the United States Attorney (R. 20).

ARGUMENT

There was ample probable cause for Yaughn's arrest, regardless of the point of time at which such arrest is considered to have taken place. If, as petitioners argue, the moment of arrest was the point of time when the two military police detained Yaughn,

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[2] Heel marks of the shoes of both petitioners corresponded in minute detail with markings in the dust at Building 619 (R. 42, 105-112, 127-129, 263-267).

reasonable grounds for believing him to be the individual sought then existed. He was found at 4:00 A.M. in an area of the base which was only three blocks from the scene of the theft, and five miles from the place where he was employed. While petitioners lay great stress on the fact that a detailed description of the individual had not been communicated to these two particular officers, the validity of an arrest is evaluated upon the collective information of all participating officers. *United States* v. *Ventresca*, 380 U.S. 102, 110; *Ker* v. *California*, 374 U.S. 23; *Smith* v. *United States*, 358 F.2d 833, 836, 838 (C.A. D.C.); *United States* v. *Pitt*, 382 F.2d 322 (C.A. 4). However, it is not necessary to reach this question, as the brief detention here by the two MP's for reasonable questioning, followed by the request that he stand aside until there had been communication with headquarters' did not constitute an arrest. *Terry* v. *Ohio*, 392 U.S. 1; *Rios* v. *United States*, 364 U.S. 253, 262; *Gilbert* v. *United States*, 366 F.2d 923, 928 (C.A. 9). The arrest can reasonably be said to have occurred when the two agents arrived and requested that petitioner accompany them to security headquarters. It is not contested that at that time ample grounds for arrest existed.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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